

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 90-03  
(March 27, 1990)

**Referrals to Defensive Driving School in Which a Judicial Officer,  
Family Member or Court Employee Has a Financial Interest**

**Issues**

1. Is it proper for a judicial officer to divert defendants to a defensive driving school in which the officer or a member of that officer's immediate family has an ownership or other business interest and decline divestiture of that interest?

**Answer:** No.

2. Is it proper for a judicial officer to divert defendants to a defensive driving school in which a court employee has an ownership or other business interest?

**Answer:** No.

3. Is it proper for a judicial officer to have an ownership or other business interest in a defensive driving school to which other judicial officers of the same court or courts of other jurisdictions divert defendants?

**Answer:** No.

4. Would it be proper for a judicial officer to have an ownership or other business interest in a defensive driving school, if defendants diverted to a defensive driving school by the judicial officer are permitted by state law to attend any defensive driving school in the state?

**Answer:** No.

**Discussion**

**Issue 1**

The Advisory Committee has previously disapproved of a judge personally keeping a portion of the fee charged by a defensive driving school. *See* Opinion 88-06. We have also disapproved of a volunteer traffic hearing officer who has a pecuniary interest in defensive driving schools sitting in a court referring motorists to that school. *See* Opinion 90-04.

This issue posits the proposition of the propriety of the active exploitation of the judicial office for personal or family gain, i.e., the channeling by the judicial officer of clientele to a defensive driving school in which the judge or the judge's family has an ownership or other business interest. Such use of the judicial office puts the judge in a financial position "more advantageous than that enjoyed by other members of the community. And, of course, one



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doesn't wear the robe in order to be able to enhance one's own finances that way." Stephen Lubet, *Judge's Business and Financial Activities: Part 1, Passive Investment, Judicial Conduct Reporter* (Winter 1989). The questioned activity is in direct violation of Canon 5C(1) admonishing judges to "refrain from financial and business dealings that tend to reflect adversely on his impartiality . . ." or "exploit his judicial position." Consequently, the questioned conduct also implicates Canons 1, 2 and 3B(2).

### Issue 2

The second issue challenges the propriety of a judicial officer diverting defendants to a defensive driving school in which a court employee has an ownership or other business interest. Inasmuch as Canon 3(B)(2) admonishes the judge to require "his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him," the appearance of the potential for exploitation of the judicial office remains and is intolerable. "[T]he appearance of impropriety and the perception by the public of special privilege and advantage must be avoided." *Matter of Feinberg*, 409 N.Y.S. 2d 1007, 1008 (1976). Although an investment may appear prudent, it "must never distract a judge from his obligation to promote public confidence in judicial institutions. (See Canon 2A)." *Matter of Fuchsberg*, 426 N.Y.S. 2d 639, 644 (1978). Court employees are part of the judicial institution. Although passive investment is often appropriate for the judiciary, not so when it impacts adversely or appears to do so on the integrity of judicial institutions.

### Issue 3

The third issue challenges the propriety of ownership by a judicial officer in a defensive driving school to which other judicial officers divert defendants. The judicial officer is in a peculiar position with reference to defensive driving schools and the public perception could easily raise the concern for cronyism in the diversion process. Courts are actively involved in that matriculation proceeding, and the judiciary must stand clear of any potential for exploitation of the judicial office. Defensive driving schools are for the public's benefit, not the judiciary's. No matter how innocent the conduct, if it unnecessarily puts a burden of explanation on the judiciary, it is subject to criticism. *Matter of Suglia*, 36 A.D.2d 326, 320 N.Y.S. 2d 352 (1971).

### Issue 4

The committee concludes that the option given the defendant in question four to attend any defensive driving school in the state does not solve the concerns previously enunciated. The potential for exploiting the judicial office for private gain remains, as does the possible appearance of corruption of judicial integrity.

## Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 1, 2, 2A, 3, 3B(2) and 5C(1) (1985).



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**Other References**

Arizona Judicial Ethics Advisory Committee, Opinions [88-06](#) (May 11, 1988); [90-04](#) (March 27, 1990).

*Matter of Feinberg*, 409 N.Y.S. 2d 1007 (1976).

*Matter of Fuchsberg*, 426 N.Y.S. 2d 639 (1978).

*Matter of Suglia*, 36 A.D.2d 326, 320 N.Y.S. 2d 352 (1971).

Stephen Lubet, *Judge's Business and Financial Activities: Part 1, Passive Investment*, American Judicature Society, Vol. 10, number 4 (Winter 1989).